THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon

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Attorney Fees/ Social Security

Plaintiffs prevailed on their separate actions in the district court seeking Social Security disability benefits. Thereafter, they received attorney fee awards under EAJA. After final judgment was entered, counsel in all three cases moved for fee awards of 25 percent of plaintiffs' back benefits under 42 U.S.C. Sec. 406(b). The district court did not award the full 25 percent that counsel sought. Rather, citing Ninth Circuit precedent, the court used the "lodestar" method to calculate fees.

Counsel for plaintiffs appealed the district court's decision to the Ninth Circuit, which affirmed. Thereafter, counsel appealed the ' 406(b) fee issue to the United States Supreme Court, which reversed the Ninth Circuit's decision and remanded. After remand, pursuant to the Supreme Court's order, the district court reviewed plaintiffs' counsel's motions for ' 406(b) fees and entered an order awarding fees to plaintiffs' counsel for the merits of the Social Security litigation on the basis of 25 percent of each plaintiff's back pay, less the amount of EAJA fees awarded earlier. This award resulted in a reduction of the three plaintiffs' past due benefits for payment of attorney fees.

Plaintiffs' counsel then filed the motion seeking $187,735 in EAJA fees and expenses related to the appeals of the ' 406(b) fee issue. Judge Redden denied the motion for EAJA fees. He noted that EAJA provides limited exceptions to the general rule of sovereign immunity that bars recovery of fees and costs against the United States, and that the exceptions should not be liberally construed. Under the EAJA statute, in order for an applicant to recover fees, it must show, among other things, that it was the "prevailing party" in the action; that it "incurred" the cost of legal fees; that it meets certain financial eligibility requirements; and that no special circumstances exist that make an award unjust. Judge Redden noted that the purpose of EAJA was to aid parties with limited resources in seeking review of unreasonable governmental actions. EAJA fees are paid by the government directly to the named party, not to his attorney. On the other hand, ' 406(b) was designed to regulate fee arrangements between claimants and their attorneys, and these fees are paid to the attorney directly out of the plaintiff's past due benefits. Therefore, EAJA fees do not reduce a plaintiff's benefits, but ' 406(b) fees do.

Judge Redden noted that the ' 406(b) appeals taken in the names of the plaintiffs raise conflict of interest issues because an increase in the award of ' 406(b) fees to counsel reduces the benefits awarded to plaintiffs. That conflict is greatly magnified in a case such as this where EAJA fees are requested, not for matters in district court, but rather for a series of appeals taken in plaintiffs' names solely on the issue of the a calculation of fees that would ordinarily result in (and did in this case result in) an increase in their award and a concomitant decrease in the plaintiffs' past due benefits. Thus, Judge Redden viewed the appeals of the fees awarded in the district court as

new and separate litigation for purposes of analyzing entitlement to EAJA fees.

Judge Redden concluded that the named plaintiffs were not eligible for EAJA fees and that if EAJA fees are not awardable to the named plaintiffs, they are not awardable to the attorneys. The named plaintiffs were not the "prevailing parties" in the ' 406(b) appeals, as required by EAJA. In its opinion, the Supreme Court stated that although the plaintiffs were named in the litigation, "the real parties in interest are their attorneys, who seek to obtain higher fee awards under ' 406(b)." Gisbrecht v. Barnhart, CV 96-6164-RE (Lead Case) (Consolidated Cases) (Opinion of Dec. 24, 2002).

Plaintiffs' Counsel:

Tim Wilborn

Government's Counsel:

Craig J. Casey

Intellectual Property

The adidas three-stripe design for shoes is sufficiently dinstinctive to survive summary judgment in a Lanham Act action challenging an allegedly confusingly similar four-stripe design. Judge Janice Stewart rejected defense attempts to parse out individual elements of the shoe under a functionality determination and held that the design must be examined as a whole to determine functionality and distinctiveness. The court also notes that a feature that was originally designed to be functional, may become non-functional over time where the design is no longer optimal.

Judge Stewart determined that the adidas design constituted product design, rather than product packaging and, thus, adidas had to come forward with proof of secondary meaning. The court found sufficient evidence to create genuine factual issues given proof of intentional copying and liklihood of consumer confusion. The court's findings also formed the basis for a denial of summary judgment against state law dilution and unfair and deceptive trade practices claims. Adidas-Salomon A.G. v. Target Corp., et al., CV 01-1582-ST (Findings and Recommendation, July 31, 2002; Adopted by Judge Redden, Oct. 31, 2002).

Plaintiff's Counsel:

Stephen M. Feldman (Local)

Defense Counsel:

Kenneth R. Davis, II (Local)

Arbitration

Judge Janice M. Stewart dismissed a petition to compel arbitration for lack of subject matter jurisdiction. In a separate action pending in a federal court in California, a bank customer filed a class action under the Federal Fair Credit Billing Act alleging that the bank engaged in improper finance charge and billing practices. The bank filed a petition in Oregon to specifically enforce a contractual arbitration clause of the underlying action. The court held that the Federal Arbitration Act did not confer subject matter jurisdiction and that the federal question raise in the underlying litigation did not justify the assertion of jurisdiction over the separate petition to compel arbitration. U.S. Bank National Ass. ND v. Strand, CV 02-769-ST (Findings & Recommendation, Sept. 19, 2002; Adopted by Judge Robert E. Jones, Nov. 15, 2002).

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